

February 19, 2020

Via ECF

Honorable Katherine Polk Failla
United States District Judge
United States District Court
Southern District of New York
Thurgood Marshall United States Courthouse
40 Foley Square, Room 2103
New York, New York 10007

MEMO ENDORSED

Re: SEC ("the Commission") v. O'Brien
19-MISC-468

Dear Judge Failla:

In response to the Court's February 11, 2020 Order, I write to advise the Court that, in the event a stay is granted, the Respondent does consent to a tolling of the statute of limitations during the pendency of any appeal of the Court's December 27, 2019 Order. With respect to the balance of the Court's February 11, 2020 Order, the Respondent is not able to identify any authorities or any factual bases for the proposition that the Applicant will be divested of any remedies in the event a stay is granted. The Respondent stands with the briefs submitted to date.

Thank you.

Respectfully,


John M. Hanamirian

JMH/lmt

cc: Paul Gizzi (via ECF)
Bennett Ellenbogen (via ECF)

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The Court is in receipt of the Commission's supplemental briefing (Dkt. #31), and Respondent's response (Dkt. #32). Having reviewed the parties' submissions, the Court questions whether it retains jurisdiction over these proceedings now that the notice of appeal has been filed. Regardless, now that Respondent has consented to a tolling of the statute of limitations, the Court believes that a stay of these proceedings is both warranted and will not prejudice the Commission. Insofar as the Commission expresses concerns about Respondent's memory of relevant events, the Court finds that the other factors in this case outweigh that concern. Respondent's motion for a stay is GRANTED.

Dated: February 21, 2020
New York, New York

SO ORDERED.

A handwritten signature in blue ink, reading "Katherine Polk Failla". The signature is written in a cursive, flowing style.

HON. KATHERINE POLK FAILLA
UNITED STATES DISTRICT JUDGE